

NEWS & INSIGHTS

Death care providers navigate COVID-19: frequently asked legal questions

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The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.

Death care services remain classified as life-sustaining businesses and may continue physical operations under Gov.

Tom Wolf's order indefinitely closing non-life-sustaining businesses across Pennsylvania and his stay-at-home order effective in 33 counties through April 30. Funeral homes, cemeteries and crematories may continue to operate, and their employees and customers may continue to travel to and access such services.

During the COVID-19 pandemic, death care providers have a number of questions regarding compliance and the impact of the Governor's orders. Below are answers to some frequently asked questions these professionals may have when making decisions about continued operations.

If I choose to continue providing services, am I required to limit them?

Yes, the Governor's order permits life-sustaining businesses to continue physical operations only if they practice social distancing and implement CDC defined mitigation measures. As a practical matter, this means things like:

- limiting in-person services to 10 people or fewer
- implementing health and hygiene measures (such as hand washing and sanitizing, discouraging sick people from attending, use of personal protective equipment)
- social distancing (such as spacing guests at least 6 feet apart, discouraging physical contact, conducting arrangements conferences by phone or video, not offering shared items like lap blankets or chair covers)

Can I still use other service providers necessary to my business, like florists or landscapers?

You can use other service providers if they are life-sustaining businesses or can provide services without in-person operations. This must be determined on a business-by-business basis.

Florists are not life-sustaining businesses. However, florists may continue to work with death care providers through delivery of online or telephone orders, provided that physical contact is minimized. Of course, delivery to anywhere other than the funeral home should be coordinated with that location. Other businesses that are classified as life-sustaining, such as grocery stores, greenhouses, and nurseries, may also be able to fulfill flower orders.

The Governor's office has clarified that landscapers are classified as a life-sustaining business and, therefore, permitted to continue physical operations.

Do I need a release from guests before livestreaming or recording services?

Probably not. While a release might be helpful, its usefulness may be outweighed by the inconvenience or the possibility of scaring the family. There are, of course, certain sensitivities surrounding a service, but attendees are still guests at a public place of business and, hopefully, are well aware that the service is being streamed or

recorded. Some practical steps you can take are:

- Be sure to get permission from the family as part of arrangements.
- If possible, include the fact that services will be streamed or recorded in the obituary or other notice.
- Post a sign during the service noting that it will be streamed or recorded.
- Announce or give a reminder at the service that it will be streamed or recorded.
- Don't forget your common sense. Don't record in the prep room. Make sure the cameras aren't accidentally capturing the restrooms or an area where someone might go to have a private moment.

One circumstance in which you do need permission of guests is if you intend to use the video or images in marketing.

Do I need a license to play music during a streamed or recorded service?

Most likely. Unless you are using a royalty-free song, you need a license to play the song at the service and a separate license to stream the song over your website. The [National Funeral Directors Association](#) (NFDA) and the [International Cemetery, Cremation and Funeral Association](#) (ICCFA) both offer music license programs. A number of vendors will also assist funeral homes with streaming. NFDA has compiled a list [here](#).

You must have a separate license to include a song as part of a recorded service to be replayed later. Unfortunately, that type of license usually must be obtained from the individual copyright owner. The best practical alternative is to use only royalty-free music in recorded services.

Do funeral homes still need permission from the Funeral Board to hold a body for more than 10 days?

Yes. As of now, the regulation requiring permission to hold a body for more than 10 days has not been suspended. But the Board has indicated that permission will be readily granted in the present circumstances.

You must request permission from a professional member of the Board and then file a request with the Board. [This form](#) may be used for that purpose. Email filing is recommended given the closure of the Board's physical office. Permission should be requested before 10 days have elapsed.

Seek experienced legal counsel

Saxton & Stump attorney [Jason Benion](#) is available to further discuss these and additional questions death care providers may have and how our [Death Care](#) group can provide guidance to navigate the challenges through the COVID-19 pandemic.

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